



DIVISION OF DISABILITY AND ELDER SERVICES

BUREAU OF QUALITY ASSURANCE
1 WEST WILSON STREET
P O BOX 2969
MADISON WI 53701-2969

Telephone: 608-266-8481
FAX: 608-267-0352
TTY: 608-266-7376
www.dhfs.state.wi.us

Jim Doyle
Governor

Helene Nelson
Secretary

State of Wisconsin

Department of Health and Family Services

**Variance for Requirements for
Certified Outpatient Psychotherapy Clinics**

Date: June 2, 2005

DDES BQA 05-007

To: Area Administrators/Assistant
Administrators 01

Tribal Chairpersons/Human
Service Coordinators 01

Bureau Directors 01

Community Substance Abuse
Providers **CMHA-01**

County Departments of Human
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Coordinators 01

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From: John Easterday, Associate Administrator, Division of Disability and Elder Services
Cris Ros-Dukler, Director, Bureau of Quality Assurance

Wisconsin Administrative Code HFS 61 governs Wisconsin certified outpatient mental health clinics. HFS 61.91-61.98, the Outpatient Psychotherapy Clinic Standards was last revised in 1996. The Department last initiated an update to this rule by drafting HFS 35 in 2000 which was not promulgated due to lack of staff resources to complete the rule-making process. Given the changes in the last few years, particularly with professional licensure and the emphasis on evidenced-based programs, rules incorporating these and other concepts need to be drafted.

In advance of rewriting HFS 61, the Department is issuing a "bundle" of variances to provide immediate regulatory relief for certified outpatient mental health clinics. The Department collaborated with the Wisconsin Coalition, a group of seven professional associations representing providers who work in these clinics.

For each of the six variances below, a provider may choose to comply with either the existing requirement in HFS 61 or the variance requirement. If a variance requirement is chosen, a provider must demonstrate to the BQA surveyor at regular site visits, evidence that these variances are reflected in clinic policies. Surveyors may monitor the implementation of the clinic policies during any site visit.

The Department has the authority to revoke any variance if, for example, it determines that the needs of the patients are not being met with continued approval of this variance, or if the health, safety, or welfare of any patient is jeopardized.

VARIANCE #1

Current Rule: HFS 61.96 (1) (b) “Required Personnel. A social worker with a masters degree from a graduate school of social work accredited by the council on social work education, or a registered nurse with a master’s degree in psychiatric-mental health nursing, or community mental health nursing from a graduate school of nursing accredited by the national league of nursing.”

Variance: Each clinic shall have sufficient staff with appropriate training, experience and supervision to meet the needs of clients as identified in the treatment plan. The certified clinic shall employ or contract with a multidisciplinary team of qualified staff readily available to meet the consumer needs.

VARIANCE #2

Current Rule: HFS 61.97 (2) “The clinic shall provide a minimum of 2 hours each of clinical treatment by a psychiatrist or psychologist and a social worker for each 40 hours of psychotherapy provided by the clinic.”

Variance: Each clinic shall have a qualified psychiatrist or psychologist available for consultation, supervision or collaboration with clinical staff. Staff of a certified clinic shall include at least one qualified licensed mental health professional as identified below. If a clinic serves clients who are dually diagnosed with mental health needs and needs related to alcohol or drug use or developmental disabilities, the clinic shall demonstrate that the multiple needs of those clients are being met.

Qualifications of Professional Staff. (a) 1. Professional staff of a certified clinic shall include mental health professionals qualified under par. (b) 1. to 7.

2. Professional staff identified in par. (b) shall provide clinical services within the discipline’s scope of practice as defined through state licensure or certification.

(b) A person employed or retained by contract to fill any of the following professional positions shall meet the minimum qualifications listed for that position:

1. Psychiatrists shall be physicians licensed under ch. 448, Stats., to practice medicine and surgery, shall have completed 3 years of residency training in psychiatry in a program approved by the accreditation council for graduate medical education, and be either certified or eligible for certification by the American board of psychiatry and neurology.

2. Psychiatric residents shall hold a doctoral degree in medicine and shall have successfully completed 1500 hours of supervised clinical experience, the acceptable

completion of which has been documented by the program director of a psychiatric residency program accredited by the accreditation council for graduate medical education.

3. Psychologists shall be licensed under ch. 455, Stats., and shall be listed with the national register of health service providers in psychology, meet the requirements for listing with the national register of health services providers in psychology or have a minimum of one year of supervised post-doctoral clinical experience related directly to the assessment and treatment of clients with mental disorders.

4. Psychology residents shall hold a doctoral degree in psychology meeting the requirements of s. 455.04 (1) (c), Stats., and shall have successfully completed 1500 hours of supervised clinical experience as documented by the Wisconsin psychology examining board.

5. Registered nurses, including advanced practice nurse prescribers (APNPs) shall be licensed under ch. 441, Stats., as a registered nurse and shall have had training in psychiatric nursing and at least one year of experience providing psychotherapy in a supervised clinical setting.

6. Marriage and Family Therapists (LMFT), Professional Counselors (LPC) or Clinical Social Workers (LCSW) shall be licensed under 2001 Wisconsin Act 80 or meet the requirements of par. (b) 7.

7. Non-licensed master's level clinicians shall be persons with a master's degree and course work in areas directly related to providing mental health services, including but not limited to: clinical psychology, psychology, school or educational psychology, rehabilitation psychology, counseling and guidance, clinical social work, psychiatric nursing, professional counselors, marriage and family therapy, or counseling psychology. Such professionals may be in training, have a temporary certificate, or working toward their 3,000 hours of supervised experience in conjunction with their respective licensing credential.

Each clinic that employs non-licensed master's level practitioners as identified under Variance #2 par. (b) (7) shall develop and implement a written policy for clinical supervision. At minimum the policy shall include:

- Non-licensed master's level practitioners providing therapy shall receive a minimum of one hour of direct, individual supervision for every 30-clock hours of face-to-face psychotherapy services provided. Supervision of non-licensed practitioners shall be documented by notation in her/his appointment book or supervisory log.
- Providers of supervision. Supervision of individual, non-licensed master's level practitioners shall be provided by mental health professionals qualified under variance # 2 par. (b) 1. to 6, or (b) (7) who have Individual Provider Status approval.
- Review of patient care for non-licensed masters' level practitioners. The supervised review of patient progress shall occur at intake and at least 30 day intervals for patients receiving at least 2 therapy sessions per week and once every 90 days for patients receiving one therapy session per week or less frequently. Staff that provide supervision must document the review by signature and date in the patient record.

- (c) If a clinic does not employ or retain by contract a professional under Variance #2 par. (b) to provide clinical treatment services specific to the special needs of a client, the clinic shall have a written referral agreement with an appropriate professional or entity to collaborate on patient treatment needs to ensure continuity of clinical care.

VARIANCE #3

Current Rule: HFS 61.97 (3) “Personnel employed by a clinic as defined in s. HFS 61.96 (1) (b) and 2 shall be under the supervision of a physician or licensed psychologist who meets the requirements of s. HFS 61.96(1)(a).

- (a) There shall be a minimum of 30 minutes of supervision which shall be documented by notation in the master appointment book for each 40 hours of therapy rendered by each professional staff person.
- (b) Supervision and review of patient progress shall occur at intake and at least at 30 day intervals for patients receiving 2 or more therapy sessions per week and once every 90 days for patients receiving one or less therapy sessions per week.”

Variance: Each clinic shall develop and implement a written policy for clinical consultation and require all personnel to adhere to all laws and regulations governing the care and treatment of patients and the standards of practice for their individual professions. At minimum the written policy will address the following:

- A system to determine the status or achievement of client outcomes, which may include a quality improvement system or a peer review system to determine if the treatment provided was effective, and if the recorded information is necessary and sufficient. This system should result in identification of necessary corrective actions, such as staff training needs.
- Criteria that identify clinical issues that warrant consultation, supervision, or collaboration, including critical incidents that involves one or more clients of the outpatient mental health clinic.
- Documentation of peer review, clinical consultation, supervision, or collaboration sought by all staff providing psychotherapy and any recommended changes or improvement of the treatment plan.

VARIANCE #4

Current Rule: HFS 61.97 (5) “A physician must make written referrals of patients for psychotherapy when therapy is not provided by or under the clinical supervision of a physician. The referral shall include a written order for psychotherapy and include the date, name of the physician and patient, the diagnosis and signature of the physician.”

Variance: A physician, licensed clinical psychologist, licensed marriage and family therapist, licensed professional counselor, licensed clinical social worker or APNP Board Certified in Psychiatric-Mental Health Nursing may issue the order for psychotherapy. The order for psychotherapy shall include the diagnosis, date, name and signature of the

prescriber, and be documented in the clinical record.

Note: This variance does not constitute granting a variance of s. 49.46 (2) (b) 6. f., Stats., or the Medical Assistance (Title XIX) requirements. BQA does not have the authority to grant waivers or variances for Medical Assistance rules. Please contact Christine Wolf at (608) 266-9195 for further information about requirements for Medical Assistance.

VARIANCE #5

Current Rule: HFS 61.97(9) Group therapy sessions should not exceed 10 patients and 2 therapists.”

Variance: A ratio of 8 patients per therapist or up to 16 patients per group with two therapists is permitted. This group ratio is consistent with Community Substance Abuse Standards, HFS 75.02 (3). (Note: 3rd party payers may have specific requirements/limitations for group size. The payer requirements may potentially affect clinic group size and reimbursement for group services.)

VARIANCE #6

Current Rule: HFS 61.97(15) f “Upon written request of the patient the clinic shall transfer the clinical information required for further treatment as determined by the supervising physician or psychologist.”

Variance: The supervising physician, psychologist, treatment director or “designated qualified staff” shall transfer or release the clinical information required for further treatment. Qualified staff shall either be licensed mental health professionals or other clinic staff with experience/knowledge in record maintenance protocol. **Note:** Staff that transfer or release clinical information must comply with the confidentiality requirements identified in HFS 92, s.51.30 and the Health Insurance Portability and Accountability Act of 1966 (HIPAA).

Note: Granting of any of these variances does not constitute granting a variance s. 49.45 (2) (b) 6. f., Stats., of the Medical Assistance (Title XIX) requirements. The Bureau of Quality Assurance does not have the authority to grant waivers or variances for Medical Assistance rules. Please contact Christine Wolf at (608) 266-9195 for further information about requirements for Medical Assistance.

If you have questions about these variances, please contact your Program Certification Specialist. [Contact phone numbers](#) are attached.

cc: Jeff Hinz, Section Chief, Bureau of Mental Health and Substance Abuse Services; Mark Hale, Supervisor, Program Certification Unit, Bureau of Quality Assurance; Dan Zimmerman, Contract Administrator, Bureau of Mental Health and Substance Abuse Services